

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
Galveston Division

## **STIPULATION**

Plaintiff Texas Department of Criminal Justice (“TDCJ”) and Defendants United States Food and Drug Administration (“FDA”), Scott Gottlieb, M.D.,<sup>1</sup> and United States of America agree to the matters set forth below and also jointly propose the schedule set forth below for adjudicating the merits of this case.

1. Defendants agree that, during the pendency of this case (including any appeals), the import shipment of drugs that TDCJ is seeking to import and that is at issue in this case will be maintained in FDA's custody and that the drugs will not be exported or destroyed.

2. Pursuant to Fed. R. Civ. P. 15(a)(2), Defendants consent to the filing of a Second Amended Complaint by TDCJ.

3. The parties jointly propose the following schedule for this case:

- a. TDCJ files the Second Amended Complaint: May 22, 2017
  - b. Defendants file their answer: June 5, 2017

<sup>1</sup> Dr. Gottlieb is automatically substituted as a defendant in his official capacity pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

- c. Defendants produce the administrative record to TDCJ: June 5, 2017
- d. TDCJ provides to Defendants a copy of the administrative record that has been redacted for all information that TDCJ considers confidential: June 14, 2017
- e. Defendants file the redacted administrative record in the docket and provide the unredacted administrative record to the Court under seal (without any prior leave by motion necessary for the filing under seal): June 23, 2017<sup>2</sup>
- f. TDCJ files its motion for summary judgment and supporting memorandum: July 31, 2017 or 14 days after the Court resolves any challenges by TDCJ to the content of the administrative record (whichever is later).
- g. Defendants file their cross-motion for summary judgment and combined memorandum supporting their cross-motion and opposing TDCJ's motion for summary judgment: September 29, 2017 or 60 days after TDCJ serves its summary judgment motion and supporting memorandum (whichever is later).
- h. TDCJ files its combined memorandum replying in support of its motion and opposing Defendants' cross-motion: November 30, 2017 or 60 days after Defendants serve their cross-motion and combined memorandum (whichever is later).
- i. Defendants file their reply memorandum in support of their cross-motion for summary judgment: January 29, 2018 or 60 days after TDCJ files its combined opposition and reply memorandum (whichever is later).
- j. To the extent that any of the foregoing memoranda refer to redacted portions of the administrative record, the memoranda shall be filed under seal, and served on the opposing party, on the dates set forth above. The parties need not seek the Court's prior leave by motion to file such memoranda under seal. Public versions of the memoranda redacting such references shall be filed in the docket within 14 days after the sealed versions are filed.

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<sup>2</sup> Defendants will note in the administrative record that their filing of the redacted administrative record does not necessarily reflect their agreement with TDCJ's designations of confidentiality, and Defendants explicitly reserve the right to make an independent determination as to confidentiality at a later time.

4. In light of the complexity of issues presented in this case, the parties jointly request the Court to set a 45-page limit for TDCJ's memorandum in support of its motion, for Defendants' combined memorandum supporting their cross-motion and opposing TDCJ's motion, for TDCJ's combined memorandum replying in support of its motion and opposing Defendants' cross-motion, and for Defendants' reply in support of their cross-motion.

Respectfully submitted,

/s/ Daniel G. Jarcho

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Attorneys for Defendants

May 18, 2017

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
Galveston Division

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TEXAS DEPARTMENT OF CRIMINAL )  
JUSTICE, )  
                                       )  
                                       Plaintiff, )  
                                       )  
                                       v. )                                  Case No. 3:17-cv-00001  
                                       )  
UNITED STATES FOOD AND DRUG )  
ADMINISTRATION, *et al.*, )  
                                       )  
                                       Defendants. )  
                                       )  
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)

**[PROPOSED] ORDER**

Upon consideration of the parties' stipulation filed May 18, 2017, and upon due deliberation, it is hereby

ORDERED that the parties comply with the actions set forth in the stipulation; and it is further

ORDERED that the schedule, procedures regarding sealed and redacted documents, and page limits set forth in the stipulation are hereby ordered by the Court.

DATED: \_\_\_\_\_

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HON. GEORGE C. HANKS, JR.  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of May, 2017, a copy of the foregoing Stipulation and Proposed Order was filed electronically. This filing was served electronically to all parties by operation of the Court's electronic filing system.

s/ Alexander V. Sverdlov